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VIET NAM*

Second periodic report of States parties due on 30 July 1991

[3 April 2001]

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Introduction

1. The comprehensive renovation process, which has unfolded since the late '80s, especially since 1990, has brought about vigorous developments and positive and deep changes in the country's aspects of life - economic, political and social. The establishment of a state governed by laws has become the centre of the process of political renovation. It stems from the correct concept that the establishment of laws by the State and the implementation, respect for and observance of laws as well as the effective exercise by citizens of their constitutional and lawful rights will ensure their enjoyment of human rights. Viet Nam's *doi moi* policy is based on the consciousness that humans should be at once the ultimate objective and the driving force behind this great cause, as has been affirmed by Viet Nam's strategy for socio-economic development from now until the Year 2000, with a view to meeting the fundamental targets, namely, "a prosperous people, a strong country, a just and civilized society". This fundamental awareness and thinking has been fully reflected in the process of establishing, amending and perfecting the legal system in Viet Nam over the past period.

2. Following its first Country Report on the Implementation of the Covenant on Civil and Political Rights, Viet Nam established and promulgated its new Constitution on 15 April 1992, which helps strongly push up the country's comprehensive renovation process ; it also promulgated dozens of Codes, Laws, Ordinances with a view to defining in more concrete terms the provisions of the Constitution relating to civil rights and the exercise of these rights.

3. This Second Country Report on the Implementation of the Covenant will, in the main, update and further analyse the latest practical and legal developments relating to the implementation of the clauses of the Covenant between 1990 and now. It is noteworthy that during this period Viet Nam has defended its first Country Report on the Implementation of the Covenant on the Rights of Children (1993) and has handed in its Country Report on the Implementation of the Nairobi Strategy, widely known as " Action for Equality, Development and Peace", for the progress of women, that paved the way for the World Women Conference (September 1995 in Beijing). Therefore, the Second Country Report on the implementation of the Covenant on Civil and Political Rights will not deal again with matters relating to article 3 (Gender equality) and article 24 (protection of and non-discrimination against children).

PART ONE - GENERAL SURVEY

I. Constitutional background and fundamental human rights

4. Viet Nam's process of comprehensive and dynamic renovation policy in the economic, political and social fields starting from the late '80s has led the country to a new stage of development, with new challenges. This requires that the Vietnamese State should draft and promulgate an updated constitution in conformity with the country's new developments, and lay solid legal foundations for the renovation policy in all aspects of life - economic, political and social. Having collected all the suggestions and recommendations made by all branches at all levels and the broad masses of the people, on 15 April 1992 the 11th session of the National Assembly of the Socialist Republic of Viet Nam (8th legislature) passed the new Constitution.

5. The 1992 Constitution sets forth the systematic and fundamental principles which serve as solid foundations for Viet Nam's legal system. These principles include the fundamental rights of citizens and measures guaranteeing the exercise of those rights. article 50 of the 1992 Constitution stipulates: "In the Socialist Republic of Viet Nam human rights in the political, civic, economic, cultural and social fields are respected. They are embodied in the citizen's rights and are determined by the Constitution and the law". It is noteworthy that this is the first time the concept of "human rights" has been introduced in the Constitution, and that the content of this concept has been given a more comprehensive expression and has attained a higher degree in comparison with all the previous constitutions.

6 The fundamental citizen's rights provided for by the new constitution include:

The right to equality, solidarity and mutual assistance among all nationalities; the right to use their own languages and systems of writing, to preserve their ethnic identity, and to develop their fine customs, habits and traditions, and the right to a full development and to the gradual improvement of the material and spiritual living conditions of the ethnic minorities (article 5).

The right to be equal before the law (article 52); the right to participate in the administration of the State and management of society (article 53); the right to vote and stand for elections (to the National Assembly and the People's Councils) (article 54).

The right to work and to enjoy labour protection (articles 55 and 56); the right to enjoy freedom of enterprise as determined by the law (article 57).

The right to ownership; the right to inheritance; the right to use land (article 58).

The right to study (article 59); the right to carry out scientific and technical research, make discoveries and inventions, and initiate technical innovations (article 60); the right to enjoy health protection (article 61).

The right to enjoy gender equality (article 63); the right to be protected in matters relating to marriage and the family (article 64); the right of children to enjoy protection, care and education (article 65); the right of young people to be provided favourable conditions for their comprehensive development (article 66); the right of (war invalids, sick soldiers, and the families of fallen soldiers and revolutionary martyrs) to enjoy preferential treatment in State policies (article 67).

The right to enjoy freedom of movement and of residence within the country, and to travel abroad and return home from abroad (article 68); the right to enjoy freedom of speech, freedom of the press, to have access to information, to assemble, set up associations and hold demonstrations (article 69); the right to freedom of belief and of religion (article 70); the right to enjoy inviolability of the person and the protection (of

the law) with regard to his life, health, honour and dignity(article 71); the right to be entitled to the inviolability of his domicile; the right to be guaranteed safety and secrecy with regard to the citizen's correspondence, telephone conversations and telegrams (article 73); the right to enjoy the protection (by the State) with regard to the legitimate interests of Vietnamese people residing abroad (article 75); the right of foreigners residing in Viet Nam to receive State protection with regard to their lives, possessions and legitimate interests in accordance with the provisions of Vietnamese law (article 81); the right of foreigners to have their request for asylum considered (by the Socialist Republic of Viet Nam).

The right to lodge complaints and denunciations (article 74).

7. Thus, in comparison with the previous constitutions, the 1992 Constitution has brought about amendments and supplements to provisions regarding human rights. This reflects the process of continuing, developing the achievements and good points, and overcoming the outstanding problems and constraints with regard to the legal guarantee of human rights in the previous constitutions. It also reflects the new way of thinking regarding human rights in conformity with international covenants on human rights to which Viet Nam has adhered, and in accordance with the socio-economic situation and the conditions of renovation, especially in the economic and political fields, and the democratization of social life in Viet Nam.

8. On the basis of the 1992 Constitution, over the past period the National Assembly of the SRVN has stepped up the work of making laws with a view to defining in more concrete terms the provisions of the Constitution. Since 1992 the 9th National Assembly has passed 33 laws and 36 decrees, most of which have set forth direct or indirect provisions regarding the citizen's rights and the exercise of those rights. For illustration we can cite many current major legal instruments regarding the citizen's rights, such as the Law on the Election of Deputies to the National Assembly, the Law on the Election of Members of the People's councils, the Law on the Protection of the People's Health, the Law on the Press, the Labour Code, the Law on Encouragement of Domestic Investment, the Law on Children's Protection ,Care and Education, the Law on Popularization of Primary Education, the Company Law, the Law on Private Enterprises, the Law on Trade Unions, the Law on Foreign Investment in Viet Nam, the Ordinance on Citizen's Complaints and Denunciations, and especially the Civil Code with over 800 articles. This code, passed by the National Assembly of the SRVN on 28 March 1995, sets out systematic and concrete provisions regarding the citizen's civil rights as provided for by the 1992 Constitution, and represents a new development in the institutionalization and protection of the citizen's rights. In addition, it is noteworthy that in the process of establishing and before the ratification of the Constitution and important laws relating to the citizen's rights, all the draft laws had been widely published to collect the opinions of the people and had been adjusted on the basis of the people's suggestions (as in the case with the draft Labour Code and the draft Civil Code...) Therefore, these instruments always embody the will and aspirations of the people and have been welcomed and correctly implemented by the people.

II. A general survey of Viet Nam's legal system

9. During the renovation process, the Vietnamese State has attached great importance to establishing a legal system and enhancing the role of the law. The 1992 Constitution of the Socialist Republic of Viet Nam stipulates:

> "The State exercises the administration of society by means of the law; it shall unceasingly strengthen socialist legality.
>
> "All State organs, economic and social bodies, units of the people's armed forces and all citizens must strictly abide by the Constitution and the law, strive to prevent and oppose all criminal acts and all violations of the Constitution and the law.
>
> "All infringements of State interests, of the rights and legitimate interests of collective and individual citizens shall be dealt with in accordance with the law." (article 12).

10. Laws are not only the tools for social management by the State, but also are the essential conditions for ensuring the citizen's rights. The protection of the citizen's rights is one of the fundamental duties and functions of Viet Nam's legal system.

11. In order to help all citizens exercise those fundamental rights, the Constitution also provides for a political institution in which the people can by means of the State and social bodies exercise and ensure the exercise of their citizen's rights. As provided for by the (1992) Constitution, the State of Viet Nam "is the State of the people, and severely punishes all acts violating the interests of the motherland and the people; it strives to build a rich and strong country in which social justice prevails, everyone has enough to eat and to wear, enjoy happiness and all conditions essential for their comprehensive development" (article 3).

12. (i) The National Assembly and the People's Councils at all levels are organs elected by the people through free, equitable, direct, universal and secret suffrage. The people make use of State power through the agency of the National Assembly and the People's Councils (article 6). The National Assembly is the highest representative organ of the people and the highest organ of State power. It shall decide the fundamental domestic and foreign policies, the socio-economic tasks the country's national defence and security issues, the essential principles governing the organization and activity of the State machinery, the social relations and the activities of the citizens. It shall exercise supreme control over all activities of the State (article 83). The People's Councils at all levels are local organs of State power; they represent the will, aspirations, and the right to mastery of the people; they are elected by the local people and are accountable to them and to the superior State organs (article 119). They have the right to decide on measures necessary for the strict implementation of the Constitution and the law at local level, on plans for socio-economic development and the execution of the budget, on national defence and security at local level, on measures aimed at stabilizing and improving the people's standards of living (article 120).

13. (ii) The President of State shall be a member of the National Assembly and shall be elected by the National Assembly. He/she is the Head of State and represents the Socialist Republic of Viet Nam internally and externally (articles 101 and 102).

14. (iii) The Government and the People's Committees at all levels as organs of State administration from central to local levels shall carry out overall administration and management of all aspects of life; they shall be respectively accountable to the National Assembly and the People's Councils at the same levels (articles 109 and 123).

15. (iv) The People's Court and the People's Office of Supervision and Control have the duty to safeguard socialist legality, the socialist system and the people's right to mastery, the property of the State and the collectives, the lives, property, freedom, honour and dignity of the citizen (article 126).

The above-mentioned provisions regarding the organization of the State machinery set forth by the Constitution have been defined in concrete terms by such laws as the Law on the Organization of the National Assembly in 1992, the Law on the Organization of the Government in 1992, the Law on the Organization of the People's Council and People's Committee in 1994, the Law on the Organization of the People's Court in 1992 (amended and supplemented in 1993 and 1995) and the Law on the Organization of the People's Office of Supervision and Control in 1992.

16. Apart from the system of organizing the State machinery, Vietnamese citizens, through the agency of their own organizations and associations like the Viet Nam Fatherland Front and its member organizations and the system of trade unions, manage to exercise their citizen's rights. Under the 1992 Constitution, the Viet Nam Fatherland Front and its member organizations constitute the political base of the people's power; they promote the tradition of national unity, strengthen the people's oneness of mind in political and moral matters; they participate in the consolidation of the people's power, join forces with the State for the care and protection of the people's legitimate interests, encourage the people to exercise their right to mastery, ensure the strict observance of the Constitution and the law, and supervise the activity of State organs, elected representatives, and State officials and employees (article 9). The trade unions, as the socio-political organization of the working class and the working people, joins State organs, economic and social bodies in looking after and safeguarding the rights and interests of all labouring people (article 10). These provisions have also been defined in concrete terms in many other instruments, such as the Law on Trade Unions, the Labour Code, the statutes, Organization and Activity Regulations of various bodies, and have proved effective.

17. In addition, on the basis of the 1992 Constitution, Vietnamese laws regarding the organization of the State machinery, on administrative and criminal matters, and on procedural matters have set up institutions and procedures aimed at guaranteeing the citizen's rights, and constitute the basis for the people to exercise and protect their legitimate rights and interests, such as the Law on Organization of People's Courts, the Law on the Organization of People's Offices of Supervision and Control, the Penal Code, the Criminal Procedure Code, the Ordinance on Citizen's Complaints and Denunciations, the Ordinance on Civil, Economic and Labour Procedures. Particularly, the National Assembly of the Socialist Republic of Viet Nam has passed the Law on Amendments and Supplements to some provisions of the Law on the Organization of People's Courts, and the Standing Committee of the National Assembly has passed the Ordinance on Procedures For Settling Administrative Cases, which stipulates that citizens have the right to lodge complaints against administrative decisions and acts by State organs and individual competent authorities in order to protect their legitimate rights and

interests, and finally the establishment of administrative tribunals within the system of People's Courts with a view to dealing with those complaints in accordance with the law. This also represents a major step forward in the protection of the citizen's rights.

18. In brief, along with the country's renovation process Viet Nam's legal system has been gradually brought to perfection with a view to further guaranteeing the citizen's rights and interests, in accordance with country's socio-economic conditions in each stage of development.

III. Viet Nam and its adherence to international covenants on human rights

19. Besides the fundamental international covenants on human rights of the UN of which Viet Nam is a member (referred to in the first Report) Viet Nam has signed and is the first country in Asia and the second in the world to have ratified the UN Covenant on Children's Rights (20 February 1990). With a view to a full implementation of the commitments and obligations provided for by the Covenant, the Vietnamese State has made its best efforts to establish a comprehensive and practical legal system regarding the children's fundamental rights. The Law on Children's Protection, Care and Education is the ever most fundamental and comprehensive law on the protection and exerce of children's rights. It was passed by the National Assembly of the SRVN on 12 August 1991, i.e. after more than one year as of the date when Viet Nam ratified the Covenant on Children's Rights. It consists of 26 articles of which 11 articles set forth concrete provisions on children's fundamental rights and duties (Chapter II), and seven articles set forth the responsibility of the family, the State and society in the protection of and respect for the children's fundamental rights (Chapter III). In addition, the National Assembly of the SRVN passed the Law on Popularization of Primary Education on 12 August 1991 which provides for and ensures the exercise of one of the children's fundamental rights, namely the right to study and to be brought up. Besides, the Vietnamese State attaches great importance to guaranteeing the exercise of children's rights by means of promulgating concrete provisions relating to children in the Constitution, the Codes, the Laws and Ordinances which have been established in the recent period. For example, the 1992 Constitution (in articles 36, 40, 60, 64 and 65); the Penal Code; the Labour Code; the Law on Marriage and the Family; the Law on Nationality of Viet Nam and the Law on the Protection of People's Health. In 1993, Viet Nam defended its first Country Report on the Implementation of the Covenant. The Commission on the Covenant on Children's Rights highly valued Viet Nam's good will and efforts in the effective implementation of the Covenant on the national plane. The Commission highly valued the establishment by Viet Nam of the Committee for the Protection and Care of Vietnamese Children, which is an organ placed under the Government and having the function of exercising control over the State regarding children's protection, care and education. It also has the function of coordinating and guiding the implementation of the Convention on the national plane.

20. In order to fulfil its obligation as a member of the Summit Meeting on International Covenants on Human Rights which Viet Nam acceded to in 1990, the Vietnamese Government has submitted and defended its first Country Report on the implementation of the International Covenant on Economic, Cultural and Social Rights, and submitted and defended its second Country Report on the Implementation of the Covenant on Elimination of All Forms of Racial Discrimination (CERD), its Country Report on the Implementation of the Nairobi Strategy for the Progress of Women, widely known as "Action for Equality-Development-Peace", which paved the way for the 4th World Women's Conference (Beijing September 1995).

PART TWO - IMPLEMENTATION OF THE COMMON COMMITMENTS SET FORTH IN THE COVENANT

I. Implementation of the "right to self-determination" (art. 1)

21. The 1992 Constitution of the SRVN provides for the country's political, economic, cultural, social, national defence and security system, the citizens' fundamental obligations, and the structure, principles governing the organization and activity of State organs. It institutionalizes the relationship between the leadership by the Party, the mastery of the people and the administration by the State. This has been given concrete expression in article 1: "The Socialist Republic of Viet Nam is an independent and sovereign country enjoying unity and territorial integrity, including its mainland, islands, territorial waters and air space".

22. The leadership role of Communist Party of Viet Nam has been stipulated in article 4 of the 1992 Constitution:" The Communist Party of Viet Nam, the vanguard of the Vietnamese working class, the faithful representative of the rights and interests of the working class, the toiling people, and the whole nation, acting upon the Marxist-Leninist doctrine and Ho Chi Minh's thought, is the force leading the State and society". Particularly, article 4 stresses that "All Party organizations operate within the framework of the Constitution and the law".

23. The people's right to mastery and self-determination has been provided for in article 2 of the 1992 Constitution: "The Socialist Republic of Viet Nam is a State of the people, by the people, and for the people. All State power belongs to the people and is based on an alliance between the working class, the peasantry, and the intelligentsia".

24. Article 17 of the 1992 Constitution stipulates: "The land, forests, rivers and lakes, water supplies, wealth lying underground or coming from the sea, the continental shelf and the air space, the capital and property invested by the State in enterprises and works in all branches and fields - the economy, culture, society, science, technology, external relations, national defence, security - and all other property determined by law as belonging to the State, come under ownership by the entire people."

25. The State exercises the administration of society by means of the law, and shall unceasingly strengthen socialist legality (article 12, 1992 Constitution). The people make use of State power through the agency of the National Assembly and the People's Councils (article 6, 1992 Constitution).

26. Thus, on the national plane, in implementation of the right to self-determination the Vietnamese people enjoy the freedom to decide on their political and economic system as has been clearly stipulated in the Constitution and through the mechanism" Party's leadership, People's mastery, and State's administration". Section XXIII of this report on the citizen's right to take part in social affairs (article 25) will deal in detail with the legal guarantee to ensure that citizens will exercise their right to self-determination in the sphere of State administration and social affairs.

II. The right to be equal before the law and protected by the law (art. 2)

27. The 1992 Constitution of Viet Nam affirms: "All citizens are equal before the law." Vietnamese citizens, regardless of ethnicity, sex, social background, religious belief, cultural standard, occupation ... have equal rights in all fields - political, economic, social and cultural. These rights are respected and protected by the law (article 50, 1992 Constitution). "The State carries out a policy of equality, solidarity and mutual assistance among all nationalities, and forbids all acts of ethnic discrimination and division" (article 5). "All religions are equal before the law" (article 70); "Male and female citizens have equal rights in all fields - political, economic, cultural, social, and family; "All acts of discrimination against women and all acts damaging women's dignity are strictly banned"; "Men and women shall receive equal pay for equal work" (article 63).

28. Besides the above-mentioned provisions of the 1992 Constitution, in every specific area, the Vietnamese law sets forth legal guarantees regarding the right to be equal and the right to be protected by the law.

29. In the political field: one of the most important political rights of the citizen is the right to vote and to stand for election to State organs. article 54 of the 1992 Constitution and article of the Law on the election of members of the People's Councils in 1994 stipulate: "The citizen of the SRVN, regardless of ethnicity, sex, social background, religious belief shall, upon reaching the age of eighteen, have the right to vote, and, upon reaching the age of twenty-one, have the right to stand for election to the National Assembly and the People's Councils in accordance with the provisions of the law."

30. In the procedural sphere: The 1988 Criminal Procedure Code, which was amended and supplemented in 1990 and 1992, stipulates: "Criminal proceedings are conducted following the principle that all citizens are equal before the law, regardless of sex, ethnicity, religious belief, social background and position. All persons guilty of violating this principle are dealt with according to the law" (article 4). The Ordinance on Procedures for Settling Civil Cases stipulates that "All persons concerned are equal with respect to their rights and obligations in a case of civil procedure" (article 9); the Ordinance on Procedures for Settling Economic Cases stipulates that "All persons concerned are equal with respect to their rights and obligations in the process of settling the case" (article 6); the Ordinance on Procedures for Settling Labour Disputes stipulates that "All persons concerned are equal with respect to their rights and obligations in the process of settling the labour case" (article 5).

31. In the civil sphere all Vietnamese citizens are equal in civil relations. The exercise of this right is guaranteed by the formation of effective mechanisms provided for by the Civil Code (passed by the 8th session of the 9th National Assembly on 28 October 1995).

> Article 1 of the Civil Code stipulates: "The task of the Civil Code is to ensure equality and legal security in civil relationships, and contribute to satisfying the material and moral needs of the people ...".

Article 8 stipulates: "In civil relationships the parties are equal; they shall not invoke the differences in ethnicity, sex, social background, economic situation, belief, religion, level of education and occupation as reasons for discriminatory treatment".

Article 12 stipulates:

"1. All civil rights of individuals, legal persons and of other parties shall be respected and protected by the law ...

"2. When the civil rights of a party are infringed upon, that party has the right to request that the Court or other competent State organs ... take appropriate measures to rehabilitate those civil rights."

32. In the sphere of labour article 5, section 1 of the Labour Code (23 June 1994) stipulates that all Vietnamese citizens, irrespective of sex, ethnicity, social background, religious belief have the right to choose freely their work and occupation, to undergo vocational training and improve their professional qualifications.

The State guarantees the right to work of women in full equality with men (article 109, section 1, Labour Code).

It is strictly forbidden to discriminate against women or to hurt their honour and human dignity (article 111, section 1, Labour Code).

The employer must refrain from acts of discrimination against workers who have set up or joined a trade union organization and are engaged in trade union activities (article 154, section 3, Labour Code).

Apart from the above-mentioned provisions, the law guarantees the worker's right to set up or join a trade union organization (article 7, section 2); it also guarantees the workers' right to stage a strike to protect their interests (article 172, Labour Code).

The law has established appropriate mechanisms for guaranteeing equal right in labour, for settling labour disputes in order to protect the worker's legal interests. Chapter XIV of the Labour Code provides for the settlement of labour disputes between a worker and the employer, and a collective of workers and the employer right from the start of the disputes (through reconciliation or the Court). The Ordinance on procedures for settling labour disputes (through lawsuits: the Court), passed by the National Assembly Standing Committee on 11 April 1996, provides for the order and procedures for settling labour disputes at the Court.

Article 12 of the Labour Code (30 June 1990) provides for mechanisms aimed at protecting the worker's rights in case the latter is meted out disciplinary sanctions or dismissed, or in case a labour contract is terminated (prior to its expiry date).

This provision is defined in more concrete terms in article 7 of Decree No. 133/HDBT dated 20 April 1991 which gives guidelines for the implementation of the Law on Trade Unions.

33. Regarding children in particular, the right to be equal before the law and protected by the law is given clear expression in the Law on the Protection, Care and Education of Children. Article 2 of the Law stipulates that "Children, regardless of sex, being in or out of wedlock, authentic children, adopted children or step children, of ethnicity, religion, social background and position and political affiliation of their parents or their guardians, shall be protected, cared for and educated; they can enjoy all the rights provided for by the law. Article 4 stipulates that "all children's rights shall be respected and implemented; all violations against children's rights, all acts affecting the development of children shall be severely punished". The Law on Popularization of Primary Education, especially the recent Civil Code, provides for the child's right to certification of birth (articles 55, 56), the right to enjoy guardianship and to be adopted (articles 58, 59), the right to have names and forenames (article 28), to have his/her ethnicity determined (articles 30), to have citizenship (article 54), and the right to ownership of private property (article 175), etc.

III. The right to gender equality (art. 3)

34. This part has been dealt with in detail in the section relating to the implementation of article 2, and will be also analysed in the section relating to the implementation of article 14 of the Convention; it will be elaborated in the Country Report by the Government of the Socialist Republic of Viet Nam on the Implementation of the Nairobi Strategy regarding the progress of women known as "Action for Equality-Development-Peace" in preparation for the 4th International Women's Conference in Beijing on 4-15 September 1995.

PART THREE - RESPECT OF THE RIGHTS RECOGNIZED BY THE COVENANT

IV. The right to life (art. 6)

35. Article 71 of the 1992 constitution affirms: "The citizen shall enjoy inviolability of the person and the protection of the law with regard to his life, health, honour and dignity ... All forms of forced confession, corporal punishment, offences against the honour and dignity of the citizen shall be strictly banned".

36. The Civil Code (October 1995) stipulates in article 32:

"1. An individual has the right to have his/her life, health, and body protected.

"2. No one shall infringe upon the life, health and body of other persons."

And article 609 on Liability for Damage stipulates:

"A person who, by his/her intentional or unintentional fault, encroaches upon the life, health, honour, dignity, prestige, property, or other legitimate interests of an individual, or who adversely affects the honour, prestige or property of a legal person or other parties, and thereby, causes damage, shall be liable for such damage".

37. The right to life is also protected as stipulated in the Criminal Code to which amendments and supplements have been brought three times. All offences against the life, health and dignity of a person are severely punished in accordance with the law. In addition, the State shall take measures to educate and re-educate people guilty of the offences. The Criminal Code reserves Chapter II (regarding offences against human life, health, dignity and honour, from article 101 to article 118), Chapter III (regarding offences against citizens' democratic freedoms, from article 119 to article 128), Chapter V (concerning Marriage and Family Offences against minors, from article 143 to article 150), Chapter VI (regarding offences against the citizen's private property rights, from article 151 to article 163), and Chapter VIII (concerning offences against safety, public order and public administration, from article 186 to article 218) in order to cope with offences against the citizen's rights, to ensure that they shall be respected, and to punish and educate those who commit offences against the citizen's rights of other persons.

38. Capital Punishment. The Vietnamese law has not yet abolished capital punishment, an exceptional penalty which applies to offenders in particularly serious circumstances, and to a number of especially dangerous offences stipulated by the law. The Criminal Code that has been amended and supplemented since 1989 has added four more articles (on manufacturing, concealing, trafficking in and transporting narcotic substances, and on appropriation of other persons' property by cheating, in which the offenders shall be given death sentences. These supplements result from research work on the experience gained by many countries in the fight against these categories of offences. A number of exceptionally serious offences causing great danger to society, and which are more dangerous than the previous ones, involve death penalty. Therefore, in order to guarantee everyone's citizen's rights, appropriate punishment should be meted out to those committing offences against the citizen's rights.

39. The application of death penalty is provided for with great precision. Only provincial people's courts upwards have the right to return a verdict of death sentence (article 145, Criminal Procedure Code). In case the accused is instituted, prosecuted, and tried for offences involving capital punishment but he/she or his/her legal representative fails to find a defence counsel, the investigating organ, the people's office of Supervision and Control or the People's Court must request the Bar Association to name an advocate to defend him/her. Articles 160 of the Criminal Procedure Code stipulates: "If the case bears a serious character the Bar Association may consist of two judges and three people's assessors. With respect to a case in which the accused is charged with an offence that may result in capital punishment the Bar Association shall consist of two judges and three people's assessors. Article 228 of the Criminal Procedure Code stipulates:

> "1. After a verdict of death sentence acquires legal force, the case file should be promptly submitted to the presiding judge of the People's Supreme Court and a copy of the verdict should be promptly submitted to the Procurator-general of the People's Supreme Office of Supervision and Control.
>
> Within two months of the receipt of the death sentence verdict and the file of the case, the Presiding judge of the People's Supreme Court and the Procurator-general of the People's Supreme Office of Supervision and Control must decide whether to lodge a protest against the verdict according to cassation or re-opening procedure.

Within seven days of the verdict coming into legal force, the convicted must send a petition to the country's president to appeal for pardon or commutation.

2. The death sentence is carried out if there is no protest from the Presiding Judge of the People's Supreme Court or the Head of the People's Supreme Office of Supervision and Control according to the procedure of rehearing or re-opening of the trial.

In the case that the convicted appeals for pardon or commutation the death sentence shall be executed after the country's President rejects the appeal."

40. Particularly, under the provision in article 27 of the Criminal Code death penalty shall not be imposed on juvenile offenders (under 18 years of age), a female who was pregnant at the time of committing the offence or at the time of trial. Execution of death penalty shall be postponed in the case with a pregnant woman or a woman whose baby is under 12 months.

V. Torture, corporal punishment and inhumane treatment are strictly prohibited (art. 7)

41. Torture, corporal punishment and inhumane treatment in any form whatsoever are prescribed by the Vietnamese law as law-breaking acts and severely dealt with. This is stipulated in series of legal documents recently published:

The 1992 Constitution (article 71) stipulates: "The citizen shall enjoy inviolability of the person and the protection of the law with regard to his life, health, honour and dignity. ... It is prohibited to use all forms of forced confession, physical punishment, offence against the citizen's honour and dignity".

The Civil Code also affirms in article 32 and article 609 that important principle.

The Law on the Protection, Care and Education of Children (12 August 1991), article 8, section 2, stipulates: "It is severely forbidden to persecute, humiliate, ill-treat, forsake, steal, kidnap, trade in and exchange fraudulently children, to incite, seduce and force them to perpetrate law-breaking acts, and commit acts damaging the healthy development of children". Perpetrators of violations against the rights of children, be they relatives or competent or responsible persons in State organs shall be properly dealt with (article 24).

Besides the provisions of the Criminal Code and the Criminal Procedure Code, during the past period many additions and amendments have been brought in to meet the current situation. Many offences relating to the beating, physical punishment, causing injuries to others have been concretely studied in order to submit in time to the forthcoming session of the National Assembly for approval. Together with studying and making laws the Vietnamese State in general and the law protecting bodies in particular have made great efforts and taken specific measures with a view to detecting, preventing and dealing in time with the organizations and individuals committing law-breaking acts.

VI. Forbidding slavery, hard labour or forced labour (art. 8)

42. In conformity with the Convention on Forbidding Slavery, Forced Labour, the 1992 Constitution, article 71, stipulates: "The citizen shall enjoy inviolability of the person and the protection of the law with regard to his/her life, health, honour and dignity".

The Labour Code, article 5, section 2, stipulates prohibition of forced labour in any form whatsoever.

The Criminal Code stipulates the forms of punishment against the crime of trading in women (against trading in slaves) (article 115), trading in children (article 149); practising forced prostitution as a form of labour exploitation (article 202).

43. With regard to detainees: In conformity with the principle of the Constitution (article 71) the Ordinance on the implementation of the imprisonment sentence (20 March 1993) reaffirms: It is strictly forbidden to use any kind of corporal punishment, offence against the honour and dignity of the person serving an imprisonment sentence" (article 4). All prisoners violating the detention rules and regulations may be sent to disciplinary establishments for a period between 7 and 15 days; they may even be fettered. But that is a necessary form of punishment, and does not means corporal punishment. The decision on the disciplinary sanction and the implementation procedure should be issued in writing and closely supervised by a competent authority (overseer) (article 32 - Rules of Detention camps - Decree 60/CP dated 16 September 1993). A female or juvenile prisoner must not be fettered in the period of detention (article 33, Rules of detention camps). If the person responsible for the control and education of prisoners violates the legal provisions, ill-treats the prisoners or is irresponsible regarding the task assigned him/her, he/she will be subjected to disciplinary sanctions depending on the degree of his/her fault, and even be prosecuted for criminal liability(article 35 - Ordinance on the implementation of imprisonment sentences). As a matter of fact, since 1993 a number of instructors, warders have been given disciplinary sanctions, dismissed or prosecuted for misuse of power, and violation, breaking the laws concerning detention and education of prisoners.

VII. Freedom and inviolability of the person (art. 9)

44. Respect for and guaranteeing the inviolability of the person of the citizen is always the objective, requirement and responsibility of the SRVN State. The 1992 Constitution has inherited the principles of the previous constitutions and stipulates: "The citizen shall enjoy inviolability of the person and the protection of the law with regard to his/her life, health, honour and dignity. No one can be arrested in the absence of a ruling by the People's Court, a ruling or sanction of the People's Office of Supervision and Control, except in case he/she is caught *flagrant delicate*. Taking a person into, or holding him/her in, custody must be done with full observance of the law" (article 71). No one can make use of his/her function and rights to violate those sacred rights of the citizen.

45. In order to define in more concrete terms this principle of the Constitution, over the past period the State has issued a series of legal documents which set out specific provisions regarding the citizen's freedoms and inviolability of the person.

46. Article 32 of the Civil Code (28 October 1995) on the right to have one's life, health and body protected stipulates that the application of new medical treatment on the body of, the giving of anaesthesia to, the operation on, and the cutting or transplanting of an organ of the body of a person shall be agreed to by that person; and if the person in question is a juvenile, or is incapable of performing civil actions or is an unconscious patient, the above shall be agreed to by the person's parents, guardian or relatives; in case of emergency that threatens the life of the patient in which the opinions of the person's parents, guardian or relatives cannot be obtained immediately, a decision of the head of the medical institution where the person is treated is required.

47. Similar provisions are set forth for a post-mortem operation: it shall only be carried out upon clear consent thereto by the person when she/he was alive; in the case there was no opinion of the deceased person, there must be the consent of the deceased person's parents, guardian or relatives. The operation on a dead body can also be carried out in accordance with the decision of the competent State authorities.

48. A matter deeply affecting the citizen's right to inviolability of the person is the arrest and holding in custody in procedural activity. The Criminal Code and the Criminal Procedure Code already set forth fairly concrete and strict provisions (referred to by the First Country's Report). However, the 1992, apart from stipulating that "no one can be arrested in the absence of a ruling by the People's Court, a ruling or sanction of the People's Office of Supervision and Control, except in case of *flagrant delicate* emergency ..., adds a new principle (often known as assumed non-guilty principle): No one shall be regarded as guilty and be subjected to punishment before the sentence of the Court has acquired full legal effect" (article 72). This principle governs the whole criminal procedure activity, and has been raised to constitutional principle. It is applied to and finds concrete expression in the promulgation and implementation of the Ordinance on the Implementation of Imprisonment Sentences (20 March 1993), Regulations on Detention Camps (Decree 60/CP dated 16 September 1993), Regulations on Temporary Custody and Detention (Decree 149/HDBT dated 5 May 1992), Ordinance on Dealing with Administrative Violations (July 1995) to replace the old ordinance (November 1989) as provided for in article 39:

> A person can be held in custody only in case important details must be gathered and used as foundations for a decision on administrative sanctions or in case when acts causing public disorder should be prevented or stopped.
>
> The duration of detention should not exceed 12 hours, and, if necessary, may be extended to 24 hours.
>
> The detainee's relatives should be informed of the detention.
>
> A decision in writing is required.
>
> It is strictly forbidden to hold in custody administrative offenders in temporary detention houses or temporary criminal wards.

49. With regard to members of the puppet armed forces and the puppet administration of the former Saigon regime, who have been concentrated for re-education after the war, the Vietnamese Government has considered these cases as matters of urgency and dealt in time with them. Up to April 1992 all the detainees in detention camps for re-education purposes (98,923 persons), have been released. The Government has also ended the application of temporary concentration for re-education purposes vis-à-vis those who collaborated with the old regime. Most of them have been given exit permits according to their wishes. The rest have returned home to live with their families and are gradually integrating themselves into the community.

50. Together with the above-mentioned legislative activities, in order to observe the principle of respecting and guaranteeing the citizen's inviolability of the person, over the past few years the State has made tremendous efforts in the struggle aimed at making social relations healthy. In implementation of Instruction 135/CT dated 14 May 1989, many campaigns aimed at rounding up and arresting criminal offenders have been carried out (especially against those who have committed offences against the life, health, honour and dignity of the citizen, such as murder, causing injuries to other persons, killing people by proxy, hooliganism, etc.). In the last analysis, those concrete activities aim to protect the life, safety, property and honour of the citizen and ensure the inviolability of the person of each individual in the community.

VIII. The detainee's right to be given humane treatment (art. 10)

51. The Vietnamese State always pays attention to the detainee's right to be given humane treatment. This stems from the principle of "arresting and detaining any person in accordance with the law", of regarding the law as the basis for and means of detention. Therefore, in the past period, a fairly great number of provisions have been set forth. In addition to the provisions referred to in the Criminal Code, the Criminal Procedure Codes, new provisions have been successively promulgated such as Decree 149/HDBT dated 5 May 1993; Decree 60/CP dated 6 September 1993, Circular No. 12/TTLB dated 20 December 1993; Circular No. 03/TTLN dated 30 June 1993, giving guidelines for the implementation of concrete provisions on the system of detention for re-education purposes. Provision on the System of temporary detention and custody in article 19 stipulates: "The temporary detainee, in case of illness, is entitled to medical examination and treatment at the camp's clinic or health station; in case of serious illness he/she shall be given treatment at state-owned hospitals". Article 20 stipulates: "The temporarily detained or imprisoned person has the right to lodge complaints and denunciations against unlawful temporary detention or imprisonment or against the non-implementation of the system of temporary detention or imprisonment". The Ordinance on the implementation of the imprisonment sentence stipulates in article 4: "It is strictly forbidden to use any form of corporal punishment, to commit offences against the honour of the person serving an imprisonment sentence", and in article 25: "the person sentenced to imprisonment is allowed to send and receive letters, postal parcels and packages, meet relatives and receive gifts in accordance with the regulations of the detention camp ...", in article 26: "... he/she has the right to lodge complaints and denunciations against unlawful decisions or acts by individuals or the organs in charge of implementing the imprisonment sentence ...", and in article 27: "The person serving an imprisonment sentence enjoys the system of disease prevention and fighting, medical examination and treatment ...". The various branches concerned (Public security, Armed forces, Tribunal, People's offices of supervision and control, Public health, Labour, War

Invalids and Social Affairs) have also issued detailed documents with a view to adjusting their activities. The above-mentioned system of legal instruments has clearly reflected the humanitarian policy conformed with Viet Nam's morality and national traditions; it stipulates that prisoners can enjoy the right to be given humane treatment, not to be subjected to torture, corporal punishment, offences against their honour and dignity, to enjoy all regimes regarding food, clothing, lodging, labour, study, recreations, entertainment, medical treatment; the right to receive visitors, receive gifts and awards, and to be considered for reducing the sentence term, etc. Conditions have been provided for them to get rid of the complex of being fully isolated from the community, and to have the tranquillity needed for re-education.

52. Despite many economic difficulties the State has spent a considerable amount of money on the consolidation and upgrading of the system of prisons to meet the prescribed standards on food, lodging, medical treatment, sanitation and environment. Annual expenditures for this are increasing with every passing day (1994: 33,400 million VND; 1995: 42,500 million VND). In addition, steady progress has been recorded in the inspection and supervision of arrests and imprisonment. Hence a marked improvement in the prisoners' living conditions. The prisoners' poor health and malnutrition no longer exist. Cases in which prison mates rob one another and settle old scores have been detected and dealt with in time. Many prisoners have been awarded for their good behaviour and their imprisonment terms have been commuted. Many have been released before their sentence term expires.

In 1995 the President of the SRVN pardoned 2621 prisoners in two phases, and commuted many others' imprisonment sentences.

IX. It is prohibited to imprison a person on the grounds that he/she fails to honour the terms of a contract (art. 11)

53. Altogether there are 280 provisions in the current Penal Code, but not a single one provides criminal liability for a person who fails to honour a contract. This is due to the fact that in the SRVN there is no case in which a person is jailed for failing to honour a contract. In more concrete terms, at present there are in Viet Nam various kinds of contracts, such as economic contracts, labour contracts and civil contracts. There are specific legal provisions for each kind of contract. The Ordinance on Economic Contracts, the Ordinance on Civil Contracts and the Ordinance on Dwelling Houses were promulgated in 1991; the Land Law was passed in 1993, and the Civil Code in 1995. Among the provisions of these codes, laws and ordinances not a single one authorizes the imprisonment of a person who fails to honour a contract. For example, the Ordinance on Civil Contracts (from article 43 to article 55) stipulates that failure to honour a contract is liable to damages the extent of which depends on the degree of violation. In the Ordinance on Economic Contracts (from article 29 to article 41) similar provisions regarding violations of contracts are also set forth. It is also the case with violations of contracts on the purchase, sale and transfer of houses, land, etc.

X. The citizen's right to freedom of movement and residence (art. 12)

54. Article 68 of the 1992 Constitution affirms: "A citizen shall have the right to freedom of movement and residence within the country; he/she can freely travel abroad and return home from abroad in accordance with the provisions of the law".

55. On the strength of the Constitution the Civil Code, promulgated on 9 November 1995, stipulates: "The movement and selection of residence of an individual are decided by the individual in conformity with his/her own needs, capacity and situation. That right shall only be restricted by a decision of the competent State authorities and in accordance with the sequence and procedures provided for by the law" (article 44).

56. The policy on control over the citizen's movement and residence within the country is undergoing many changes for the better, with a view to paving the way for the people's easier movement and business activities (especially in cities and new economic zones). Many troublesome procedures regarding permanent and temporary residence registration, etc. have been abrogated. The State is now concentrating much of its efforts to bring in amendments to Decree 04/HDBT dated 7 January 1988 on control over residence registration to replace the old provisions which no longer conform to the new development of the society.

57. Apart from stipulating the citizen's right to freedom of movement, all legal documents have institutionalized the principles and procedures to help citizens to observe them. Restrictions of the right to freedom of movement and residence are made public and applied only to certain people and areas (for instance, those who are ruled by the Court to reside at fixed places, or who are put under house arrest under the Criminal Procedure Code; the border areas, zones to be protected, etc. All this is set forth in Decree 99/HDBT dated 27 March 1992 on the status of the Viet Nam-China border area, in Decree 427/HDBT dated 12 December 1990 on the status of the Viet Nam-Laos border area, and in Decree 42/HDBT dated 29 January 1993 on the status of the Viet Nam-Cambodia border area. Decision 128/TTg dated 1 December 1992 on determining the areas and places where road signs are to be planted to restrict movement and residence; Decision 56/CP dated 18 September 1995 on the provisions regarding house rent in Viet Nam by foreigners and Vietnamese residing abroad.

58. The right to go abroad and to return home from abroad is a new point provided for by the 1992 Constitution (in comparison with the previous constitutions). In order to help citizens to exercise these rights the State has promulgated many specific provisions regarding passports and visas (Decree 48/CP dated 8 July 1993); on emigration and immigration procedures (Decree 24/CP dated 24 March 1995).

59. In addition Viet Nam has signed nine more visa-free entry agreements with the countries concerned (Algeria, India, Belarus, Hungary, Iran, Russia, the Czech Republic, Slovenia, Ukraine and China) to create favourable conditions for Vietnamese citizens to go abroad or to return home from abroad. This policy of strengthening international relations and exchanges has made it much easier for Vietnamese citizens to go abroad and return home from abroad. In the 199-1995 period Viet Nam managed to sort out tens of thousands of cases of exit and entry for private purposes, and welcome back home 50,000 repatriates. However, like in other countries, Vietnamese law also imposes restrictions on the right to go abroad of those who are serving imprisonment sentences, who are prosecuted for criminal, civil or administrative liability, or those who job is related to national secret (at the request of the State organ concerned).

60. Regarding those who are allowed by a foreign country to settle down there for different reasons (doing business, family reunion, or humanitarian reasons) the Vietnamese State will create favourable conditions for them to emigrate and settle property problems so that they can go abroad and settle there.

61. In case Vietnamese citizens are not allowed by the foreign country to reside there the Vietnamese government is ready to hold negotiations to receive them back (e.g. in the case with Germany, the Netherlands and Canada). The Vietnamese government also encourages Vietnamese citizens to make investment in Viet Nam, allow them and create favourable conditions for them to return home to visit their relatives and homeland, and repatriate to Viet Nam to live according to their wishes (Decree No. 29/CP dated 27 May 1993 on measures to encourage Vietnamese residing abroad to make investment in Viet Nam; Decision No. 59/TTg dated 4 February 1994 by the Prime Minister on the settlement of the problem of repatriation of Vietnamese living abroad).

Protection of the interests of Vietnamese citizens residing abroad

62. At present, two million Vietnamese are residing abroad, in more than 70 countries. They concentrate on Northern and Western Europe, Asia, America, Oceania, and countries belonging to the former Soviet Union, and Eastern Europe. The community of overseas Vietnamese is constantly provided favourable conditions to keep close contact with their homeland. The Vietnamese State always attaches great importance to the protection of Vietnamese citizens residing abroad. The 1992 Constitution of the SRVN affirms: "The State protects the legitimate interests of Vietnamese residing abroad". The assignment of this responsibility of the State in this legal document of greatest value gives expression to the fact that the SRVN is the State "of the people, by the people and for the people". This also constitutes a major legal basis for responsible bodies to carry out protection work; it is also a principle governing the establishment of Vietnamese legal documents in this area.

63. Protection of overseas Vietnamese citizens has so far been the consistent policy of the Vietnamese State: the 1992 Constitution is the continuation of the previous constitutions (both article 36 of the 1959 Constitution and article 75 of the 1980 Constitution provide for this duty). The function of protecting citizens is also provided for in many other legal documents, such as the Law on Nationality (28 June 1988), the Law on the Organization of the Government (30 September 1992).

64. The 1992 Constitution also stipulates that the government, as the highest State administrative organ, has the duty of guiding and carrying out the protection of overseas Vietnamese citizens. In the system of organs placed under the government, the Ministry of Foreign Affairs is the organ responsible for carrying out this function through the agency of the network of Viet Nam's diplomatic missions and consulates abroad.

65. Under the Ordinance on Consular Affairs dated 13 November 1990 and Decree No. 189/HDBT dated 4 June 1992 giving guidelines for the implementation of the Ordinance, the work of protecting citizens includes the following: the Consul must take all necessary measures to help Vietnamese citizens fully enjoy the legitimate rights and interests in the country of residence, to restore the violated legitimate rights and interests, to help Vietnamese citizens in

cases where they are arrested, held in custody, temporarily detained, imprisoned, and to act as the citizens' representative. Protection work is done in other cases such as inheritance, tutorship, etc. The protection of Vietnamese citizens should be done in conformity with Vietnamese law, and the international covenants which Viet Nam and that country have signed and adhered to, and to international practice.

66. Furthermore, accession by Viet Nam to the 1961 Vienna Convention on Diplomatic Relations and the 1963 Vienna Convention on Consular Relations, and the signing of consular agreements, agreements on mutual assistance regarding judicial matters, agreements on overseas nationals with other countries have also laid important legal foundations for the fulfilment of the task of protecting Vietnamese citizens residing abroad.

XI. Rights and obligations of foreigners residing in Viet Nam (art. 13)

67. Article 81 of the 1992 Constitution gives clear expression to the policy of the Vietnamese State regarding foreigners. It stipulates that:

> The State ensures protection with regard to the lives, possessions, and other legitimate interests of foreigners residing in Viet Nam in accordance with Vietnamese law.
>
> Foreigners residing in Viet Nam must abide by the Constitution and law of Viet Nam.
>
> Foreigners may enter and settle down in Viet Nam and be granted "permanent residence certificate" provided they have legitimate reasons (e.g. family reunion).
>
> The SRVN shall consider granting asylum to foreigners struggling for freedom, national independence, socialism, democracy and peace, or are persecuted because of their scientific work (article 82, 1992 Constitution).

68. Under the current provisions of the law, foreigners shall enjoy the same rights as Vietnamese citizens, except for some restrictions on the right to vote and stand election (article 2 of the Law on Election to the National Assembly dated 15 April 1992 and article 2 of the Law on Election to People's Councils dated 21 June 1994). They shall enjoy the right to freedom of residence and movement as stipulated below:

(i) Foreigners shall enjoy the right to freedom of movement except for certain areas such as border belts, military zones, defence works, or for reasons of security, national defence, public order and social safety (article 12, Decree No. 04/CP dated 18 January 1993 by the government setting forth detailed provisions regarding the implementation of the Ordinance on exit, entry, residence, travel of foreigners residing in Viet Nam).

(ii) Exit from Viet Nam of foreigners is not restricted; issuance of exit visas, or the exit may be suspended only in the following cases:

> (1) The applicant is being prosecuted for criminal offence or bears the duty to serve a sentence of the criminal court;

(2) The applicant bears the duty to implement a sentence of the civil court, the decision of an arbitration organization on punishment for administrative violation, tax fee obligations and other financial obligations as regulated by Vietnamese laws;

(3) "A warrant of arrest or decision on temporary detention by a Vietnamese competent authority (article 7, Ordinance on Entry, Exit, Residence, Travel, of Foreigners in Viet Nam);

(iii) Foreigners may be expelled from Viet Nam in case of violation of national security, when they have served sentences given them by Vietnamese Courts for criminal offences and no longer have the obligation to execute the sentences, or when they themselves pose threats to the lives, health of other people in Viet Nam. Foreigners are only expelled from Viet Nam under the "Expulsion Order" issued by the Minister of the Interior. The "Expulsion Order" should specify the full name, occupation and nationality of the person to be expelled, the reason of the expulsion, and the deadline for he/she to leave Viet Nam (articles 14, 15, and 16 of the Ordinance on Exit, Entry, Residence and Travel of Foreigners Residing in Viet Nam).

69. On the right to have occupations in Viet Nam the law stipulates that:

(i) Foreigners are forbidden to be editors-in-chief (print media), directors-general of radio or television stations, and journalists (articles 13 and 14 of Viet Nam's Law on the Press dated 28 December 1989).

(ii) Foreigners should not be appointed as officials in Viet Nam's administrative organs, to be judges, people's assessors and procurators (article 1, Decree No. 169/HDBT dated 25 May 1991 by the Council of Ministers on State employees; article 4, Ordinance on Judges and People's Assessors dated 14 May 1993; article 4 on Procurators of the People's Office of Supervision and Control).

XII. The right to be equal before the court, to be tried by the court in a fair, independent and impartial way (art. 14)

70. The principle under which all citizens are equal before the law (article 53, 1992 Constitution) has been defined in more concrete terms in the Law on Organization of Courts: "The People's court holds trials following the principle under which all citizens are equal before the law, regardless of sex, ethnicity, religious belief, social background and position. This principle has been defined in more concrete terms in the Criminal Procedure Code: guaranteeing the right to be equal before the Court. The procurator, the accused, the defence counsel, the injured party, the civil defendant, the civil plaintiff, the person having interests and obligation in the case and their legal representatives have the right to be equal in producing evidence, making requests and arguing before the court.

71. The People's Courts shall hold their hearings in public (except in special cases) and their decisions shall conform to the will of the majority. During a trial the judges and assessors are independent, have equal rights and shall only obey the law (articles 130 and 131, 1992 Constitution). This principle has been institutionalized in the Law on the Organization of Courts

and the Criminal Procedure Code (articles 16,17,18,19). At the trial the accused is permitted to request that the Court change the persons conducting the proceedings (judges, people's assessors, secretary, procurator), and the expert witness, and has the right to produce evidence and make his/her own requests; he/she has the right to defend himself/herself or ask for a defence counsel; and has the right to defend himself/herself or ask for a defence counsel; he/she has the right to appeal against the judgment and decision of the Court.

72. In the case where the person conducting the proceedings is also the injured party, the civil plaintiff, the civil defendant, the persons having interests and obligations in the case, the legal representative, the relative of those persons or of the defendant and accused, or has taken part in the trial as the defence counsel, the witness, expert witness, interpreter in the case, or has other sound foundations to consider that they are not impartial while exercising their duty, then he/she should refuse the conduct of the proceedings or be changed.

73. When there are foundations to affirm that the persons conducting the proceedings are not impartial in the exercise of their duty, the procurator, the defendant, the accused, the injured party, the civil plaintiff, the civil defendant and their legal representative, the defence counsel, the protector of the interests of the injured party ... have the right to request (of the court) that the persons conducting the proceedings be changed.

74. The right to defend himself/herself of the defendant and the accused constitutes an important principle to be followed during the process of proceedings. This principle has been clearly stated in the Constitution (article 132) and articles 36 and 37 of the Criminal Procedure Code.

> The defence counsel shall take part in the proceedings from the time when legal action is taken against the defendant.
>
> The defence counsel has the right to be present when the defendant is questioned and during other investigating activities. With the agreement of the investigator the defence counsel is permitted to question the defendant.

75. The defence counsel has the right to request (of the court) that the persons conducting the proceedings, the expert witness, and the interpreter be changed.

> The defence counsel is selected by the defendant, the accused or their legal representative. In some cases, if the defendant, the accused, and their legal representative do not invite the defence counsel, then the bodies in charge of protecting the law must ask the Bar Association to name their defence counsel.

76. The accused has also the right to defend himself/herself. The right of the accused to be defended is guaranteed by the law (article 132, 1992 Constitution). At present, in provinces and cities there is a Bar Association which help the accused and other people concerned to defend their rights and legal interests, and contribute to the protection of the socialist legislation. In addition, in the localities there are legal consultancy offices which join forces with the Bar Association to enable people to exercise their legal interests.

77. In order to guarantee the right to be defended of the defendant or the accused, article 137 of the Criminal Procedure Code stipulates: "When the investigation is terminated, if prosecution is requested by the investigating body the case file shall be transferred to the Procuratorate, and the investigating body must inform the defendant and the defence counsel of the decision. As a matter of fact, in all cases the conclusion of the investigation is conveyed to the defendant who has the right to give his/her opinion about the conclusion of the investigation in the minutes on the conveyance of the investigation conclusion before the file is transferred to the Procuratorate.

78. Within the time limit (set by the law, currently 30 days) of the receipt of the case file and the investigation conclusion, the Procuratorate must decide whether a legal action should be taken against the defendant or not; if so, the decision should be expressed by an indictment which should be conveyed to the accused. The conveyance of the indictment should be recorded in the minutes in which the accused has the right to give his/her opinion. The case file, the indictment and the minutes of conveyance should be transferred to the Court.

79. All complaints against the activity of the investigator shall be sent to the investigating body or the Procuratorate of the same level for settlement.

80. All complaints against the procurator shall be sent to the head of the Procuratorate of the same or higher level for settlement. Thus all violations of the right of the defendant, the accused, and people concerned shall be dealt with.

81. Within the time limit set by the law (45 days for minor offences, three months for serious ones) of the receipt of the case file, the Court must issue decisions. If the case is to be brought before the Court, the latter must issue a decision in which the following should be clearly stated: the time and venue of the trial, the name of the offence, the law under which the Procuratorate takes legal action against the accused, the character of the hearing (open or closed), the level of the Court (of first instance or concurrently first instance and appeal), the full names of the persons conducting the proceedings at the trial (judge, people's assessors, secretary, procurator acting as prosecutor), the names of the defence counsel, the interpreter and of those summoned to the trial, and the evidence to be produced for consideration. The decision to put the case on trial shall be handed to the accused, his/her legal representative and the defence counsel ten days at the latest before the opening of the trial. These provisions of the law aim to create conditions for the defendant, the accused, the persons concerned to exercise their right and for lawyers' organizations to contribute to the protection of socialist legality.

82. All complaints about the Decision to put the case on trial shall be considered by the Court and openly settled in order to create the best conditions for everyone to exercise their legal rights.

83. Article 133 of the 1992 Constitution stipulates: The (People's) Courts shall guarantee that citizens of the SRVN who are members of various nationalities can use their own languages and system of writing in court". Putting this provision in more concrete terms, the Criminal Procedure Code (article 45) stipulates: " The interpreter is a person appointed by the investigating body, the Procuratorate, or at the request of the court, in case the persons conducting or taking part in the proceedings cannot use the Vietnamese language".

XIII. Retroactivity is forbidden in the Criminal Code (art. 15)

84. The principle of forbidding retroactivity referred to in Viet Nam's Criminal Code has, in the main, been elaborately analysed in the first Country Report. Since 1990 there have been no amendments or supplements in this respect.

XIV. The right to be recognized as having legal capacity (art. 16)

85. Article 16 of the Civil Code provides for the concept of the individual's capacity in civil law as follows:

1. The capacity of the individual to have civil rights and obligations.

2. Every individual has the same capacity in civil law.

3. The capacity in civil law of an individual commences as from the individual's birth and terminates at the time of the individual's death.

86. Articles 19, 20, 21 and 22 of the Civil Code set forth concrete provisions about the capacity to perform civil actions of individuals, stipulating thereby that only individuals reaching 18 years of age or above have full capacity to perform civil actions, and minors (from fully 6 years of age to less than fully 18 years of age) have only limited capacity of action.

87. In a number of specific spheres if the age of the citizen provided for by the law differs, it is because it aims to define the citizen's lawful relations when he/she is involved in a specific relationship. That does not mean that the law restricts the citizen's legal capacity (in general).

1. In the sphere of labour: Article 6 of the Labour Code provides that a worker is a person who is at least 15 years old, and an employer is a person who is at least 18 years old.

2. In the sphere of marriage and family:

- Age required for marriage:

  At least 20 years of age for men, and 18 years of age for women.

- Age required for adoption of children:

  The adoptive parents shall be at least 20 years older than the adopted child.

88. In the sphere of civil transactions: Article 22 of the Civil Code stipulates that in civil transactions carried out for the purpose of meeting the needs of daily life a representative is not required in accordance with the age group; in the case that a person from fully 15 years old to less than fully 18 years old has independent property sufficient to ensure the fulfilment of civil obligations, such person can establish and execute civil transactions himself/herself and shall not need a representative except in cases provided for by the law.

89. In the sphere of vote and standing for election: Article 54 of the 1992 Constitution provides that the citizen shall, upon reaching the age of 18, have the right to vote, and, upon reaching the age of 21, have the right to stand for election to the National Assembly and the People's Councils in accordance with the provisions of the law.

XV. The right to inviolability of domicile and to be guaranteed secrecy of correspondence (art. 17)

90. Continuing the principles provided for in the previous constitutions the 1992 Constitution stipulates once again:

> "The citizen has the right to inviolability of domicile. No one can arbitrarily enter the domicile of another person without the latter's consent, except in cases authorized by the law. Safety and secrecy are guaranteed to the citizen's letters, telephone conversations and telegrams.
>
> "Domiciliary searches and the opening, checking and keeping of a citizen's letters and telegrams can only be done by a competent authority in accordance with the provisions of the law" (article 73).

91. In order to put that principle in more concrete terms the Civil Code also stipulates: "No one shall arbitrarily open, keep or destroy letters, telegrams, or shall eavesdrop on telephone conversations of others, or shall, by their actions, prevent or obstruct the communication lines of others (article 34). House searching, surveillance of letters and telephone conversations shall be carried out by orders of the competent authority and in accordance with the procedures provided for by the law. The Criminal Code and the Criminal Procedure Code have clearly stipulated the order, procedures and competence with respect to the search and the legal responsibility vis-à-vis violations of this provision (already dealt with in the first Report).

92. The citizen's right to inviolability of domicile and correspondence has been in fact guaranteed and respected. This has been reflected in the internal rules, regulations and statutes of various branches whose activities are related to the rights and freedoms of the citizen (Investigation, banking, Posts, etc.) The members of those bodies should meet the standards with regard to their quality, professional level, knowledge of the law, and shall not be subjected to strict control and supervision of responsible bodies.

XVI. Freedom of belief and religion (art. 18)

93. Article 70 of the 1992 Constitution stipulates:

> "The citizen shall enjoy freedom of belief and religion; he/she can follow any religion or follow none.
>
> "All religions are equal before the law.
>
> "The places of worship of all faiths and religions are protected by the law.

> "No one can violate freedom of belief and of religion, nor can anyone misuse belief and religion to contravene the law and State policies".

94. The Criminal Code sets forth punishment vis-à-vis offences against freedom of belief (articles 124 and 128 of the Law on Amendments and Supplements to Some Provisions of the Criminal Code passed on 12 August 1991).

95. Decree 69/HDBT dated 21 March 1991 by the Council of Ministers (now the Government) about Provisions on Religious Activities, which replaces Decree 297/CP dated 11 November 1987 by the Government Council. This decree, comprising three chapters and 28 articles, is the concretization, in the new situation, of the State's policy of respect for freedom of belief regarding all religions, and aims to guarantee freedom of belief and religious activities in the legitimate interests of citizens, bring into full play the strength of unity needed for the construction and defence of Vietnamese socialist Homeland of compatriots from all religions; it also aims to prevent and prohibit violations of freedom of belief and misuse of religions to conduct activities against the State, undermine the unity and the interests of the people.

96. The decree deals with the following main spheres in religious activities:

The people's religious life (articles 4,5,6,7,8, 9 and 10);

Reparation and construction of places of worship (articles 11,12 and 13);

Printing, publishing Sacred Texts and Holy Books; production, import of religious cultural articles and instruments used in religious rituals (article 14);

Training of religious dignitaries, monks and priests (articles 17 and 18);

Charity activities of religious organizations (articles 16, 25, 26 and 27).

The great majority of religious followers and personalities welcome this decree and assert that it reflects one of the concerns of the State regarding compatriots of various religions in the renovation process of Viet Nam.

97. Article 7 of Decree 79/CP dated 6 November 1993 on the implementation of the Law on Publication (under article 18 of the Law on Publication) stipulates: "After consultations with various religious organizations the Ministry of Culture and Information has selected a number of central and local publishing houses in Hanoi, Ho Chi Minh City and central Viet Nam and assigned them the task of publishing Sacred Texts and Holy Books of various religious organizations in a convenient way.

98. Pursuant to the spirit of article 7 of Decree 79/CP, the Ministry of Culture and Information, through Note 515/XB dated 2 April 1994 assigns the Ho Chi Minh City Publishing House, Note 596/XB dated 27 April 1994, assigns the Thuan Hoa (Hue) Publishing House, and

Chronological Order	Passage date	Names of Ordinances	Decrees on detailed provisions & guidelines for implementation
25	20-3-1993	Ord. on Execution of Imprisonment Sentences	Decree60/CP 16/9/1993
26	26-4-1993	Ord. on Organization of Military Courts	
27	26-4-1993	Ord. on Organ. of Military Office of Sup.&Control	
28	26-4-1993	Ord. on Execution of Civil Decisions	
29	26-4-1993	Ord. on Recognition and Execution in VN Sentences and Civil Decisions by Foreign Courts	
30	26-5-1993	Ord. on Procurators of POSC	
31	26-51993	Ord. on Judges& Assessors of People's Courts	
32	7-9-1993	Ord. on Privileges & Immunities for Diplomatic missions, Consulates and Repr.Offices of Intern. Organaniz. in VN	Decree 73/CP 30/7/1994
33	13-10-1993	Ord. on Operations of private Physicians &Pharmacists	Decree 06/CP 29/1/1994
34	15-12-1993	Ord. on Vietnamese Rep. Offices Abroad	Decree 183/CP 18/11/1944
35	15-12-1993	Ord.on Marriage & Family Involving a Vietnamese and a Foreigner	Decree 184/CP 30/11/1994
36	29-3-1994	Ord. on Additional Tax on Households Using Farm Land Exceeding Set Acreage	Decree 84/CP 8/8/1994
37	29-3-1994	Ord. on Procedures for Settling Economic Cases	
38	3-6-1994	Ord. on Protection of Defence Projects & Mil. Areas	Decree 04/CP 16/1/1995
39	3-6-1994	Ord. on Income Tax on High-income Earners	Decree05/CP20/1/1995
40	3-6-1994	Ord. on A.&S. to Provisions of Ord. on House&Land Tax	
41	10-9-1994	Ord. providing for Conferring "Heroic Mother" Titles	Decree 176/CP
42	10-9-1994	Ord. on Preferential Treatment Given to Revolutionaries, Martyrs, Families of Martyrs, War Invalids & War Sick, Members of the Resistance & Individuals with meritorious Service to the Nation	Decree 28/CP 29/4/1995
43	10-9-1994	Ord. on Exploiting and Protection of Hydraulic Works	
44	25-10-1994	Ord. on Right & Obligations of Domestic Organizations Having Land Allocated or Rented by the State	Decree 18/CP 13/2/1995

Chronological Order	Passage date	Names of Ordinances	Decrees on detailed provisions & guidelines for implementation
45	25-10-1994	Ord. on Right & Obligations of Foreign Organizations and Individuals Renting Land in Viet Nam	Decree 11/CP 24/1/1995
46	10-12-1004	Ord. on Protection of Copyright	
47	10-12-1994	Ord. on Protection of Communications Works	
48	10-12-1994	Ord. on Exploitation & Protection of Hydrometeorological Works	

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Note 597/XB dated 27 April 1994, assigns the Hanoi Publishing House, the task of publishing Sacred Texts and Holy Books of various religious organizations from southern, central and northern provinces of Viet Nam.

99. Article 51 of the Land Law (24 July 1994) determines the area of land to be allocated to religious institutions to be used for religious purposes.

100. Decree 94/CP dated 25 Aug. 1994 provides for details of the implementation of the Ordinance on Land and House Taxes. Article 2 of the Decree stipulates: " No tax should be levied on the following cases:

1. ...

2. ... land authorized by competent State organs to be used as public places of worship by religious organizations.

101. Decree 37/CP dated 4 June 1993 by the Government "On the Tasks and Limits of Authority Regarding the Organization of the Government's Commission on Religions", stipulates that the Government's Commission on Religions is a body under the government having the function of State administration on religious activities nationwide; it is the link for coordinating work with various branches regarding religion work, and for maintaining contact with religious organizations (article 1) and it has the tasks and authority (referred to in article 2 of the Decree).

102. As a matter of fact, the activities of religions continue to unfold:

1. They have started repairing old places of worship and building new ones (some 700 places of worship have been built or repaired since 1990).

2. They have printed and published a great amount of Sacred Texts and Holy Books with hundreds of titles and hundreds of thousands of copies. The Christian Church is allowed to issue a quarterly, so is the Buddhist Association.

3. Six Grand Seminaries belonging to the Christian Church have expanded their activities with nearly 500 seminary students. Students are recruited every two years. The Buddhist Association boasts two Buddhist higher education institutions, and 21 Buddhist basic schools are operating regularly ... For the first time the translation of the Tripikata was done with the participation of dozens of renowned Buddhist scholars.

4. Between 1990 and 1996 hundreds of priests, bishops, Buddhist monks and nuns went abroad to attend religious conferences, or further their studies on religion. Many of them have been awarded Master or Doctor's degrees in foreign countries.

5. A number of Cao Dai religious sects have been reorganized, namely the Cao Dai Tien Thien sect, the Cao Dai Minh Chon Dao sect, the Cao Dai Truyen Giao sect, etc.

XVII. Freedom of speech (art. 19)

103. Freedom of speech is one of the citizen's fundamental rights provided for by the 1992 Constitution of the SRVN in article 69: "The citizen shall enjoy freedom of speech, freedom of the press". This provision has been also defined in more concrete terms in the following legal documents and laws:

1. The Law on the Press (passed by the N.A. on 28 December 1989) stipulates in article 2:

> "The State shall create favourable conditions for citizens to exercise their right to freedom of the press and freedom of speech in the press, and for the press to promote its role.
>
> "The press and newspersons shall carry out their activities within the framework of the law and enjoy protection of the State; no organization or individual shall be allowed to restrict or hinder their activities. No one shall be allowed to abuse the right to freedom of the press and freedom of speech in the press to infringe on the interests of the State, of any collective group or citizen.
>
> "The press shall not be subjected to censorship prior to publication or broadcast".

104. On 20 April 1992 the Council of Ministers (at present the government) promulgated Decree 133/HDBT to stipulate in details the implementation of the above-mentioned Law on the Press:

2. The Law on Publication (passed by the N.A. on 7 July 1993) stipulates in article 2:

> "The State shall guarantees the right to popularize works in the form of publications by citizens, State organs, political, social and economic organizations, the armed forces ...
>
> "The State shall not impose censorship on works prior to their publication, except in cases requiring a decision by the Prime Minister".

105. Article 2 of Decree 79/CP dated 6 November 1993 by the Government providing for details of the implementation of the Law on Publication stipulates:

> "The State shall not impose censorship on works prior to their publication except in cases where their contents violate article 22 0f the Law on Publication, that is those opposing the State of the SRVN, destroying the people's block of unity, conducting propaganda for violence and war of aggression, inciting enmity among the nations and peoples, disseminating reactionary ideas, culture, obscene and depraved lifestyle, criminal acts, social evils, superstition, bigotry, destroying the nation's fine traditions and mores, divulging secrets of the Party, State, military and security, economic and external policy secrets, secrets involving the private lives of citizens, and other secrets provided

for by the law; distorting history, denying revolutionary achievements, offending great men, national heroes, slandering and harming the prestige of organizations, the honour and dignity of citizens;

3. The Civil Code provides for a mechanism which helps ensure that the citizen exercise his/her right through the formulation of principles governing the protection of copyright regarding various genres of work protected by the law (articles 745 and 747).

XVIII. Propaganda for war, racial enmity and discrimination is prohibited (art. 20)

106. The First Country Report has fully dealt with the provision on banning all propaganda for war, racial enmity and discrimination in the Criminal Code. The Law on the Press, passed by the National Assembly on 28 December 1989, stipulates in article 10 (section 2): "It is forbidden to incite people to violence, conducting propaganda for war of aggression, sow enmity among nations and peoples ... It is noteworthy that the Law on Publication passed by the N.A. on 7 July 1993 (in article 2), also sets forth provisions on censoring and prohibiting works which conduct propaganda for violence and war of aggression, sow enmity among nations and peoples.

XIX. The right to peaceful assembly (art. 21)

107. The 1992 Constitution stipulates: "The citizen shall enjoy freedom of speech, freedom of the press, freedom to have access to information, to assemble, to set up associations, to stage demonstrations in accordance with the provisions of the law(article 69). In fact, however, besides the Act No. 101 SL/L003 dated 20 May 1957 providing for freedom of assembly and Decree 257/TTg dated 14 June 1957 giving guidelines for the implementation of the Act, so far no more documents have been promulgated. In the recent time, several strikes and go-slow strikes took place in a number of companies and enterprises (especially in joint-ventures with foreigners) for purely economic purposes. The State promulgated in time the Ordinance on Procedures for Settling Labour Disputes on 11 April 1996, which deals with the strike problem.

XX. The right to freedom of association (art. 22)

108. Like the right to freedom of assembly, the right to freedom of association is recognized by the constitutions and defined in more concrete terms by Act No. 102-SL/L004 dated 20/5/57, which specifies regulations on founding associations; Decree 258/TTg dated 14/6/1957 and gives guidelines for the implementation of the right (referred to in the First Country Report). On 7 July 1990 the State promulgated the Law on Trade Unions to replace Act No. 108-SL/L10 dated 5/11/1957.

109. Abiding by the provisions of the law and meeting the citizen's wish to found associations the State has granted permits to over 100 mass organizations and associations to conduct activities in provinces and cities. The local administrations have also recognized and permitted thousands of clubs and groups having different structures and forms and bearing the character of charity, elderly people protection or mutual assistance, etc. to conduct effective activities.

110. The government has also issued a number of instructions to help adjust the activities of mass associations (Instruction No. 01-CT/HDBT dated 5/1/1989 on control over the organization and activities of mass associations; Instruction No.202-CT/HDBT dated 5/6/1990 on the implementation of State provisions on the founding of associations). These instructions demand that branches and administrations at all levels should not interfere too deeply into specific activities, so as not to deprive associations of their independent character, and that they should respect their right to self-management, and create material and moral conditions for associations to develop in the right direction and conduct activities in accordance with their objectives and the provisions of the law, and prevent the misuse of the right to freedom of association to cause social disorder and adversely affect the rights and interests of the community.

XXI. The right to marry and found a family (art. 23)

111. The first report has dealt in detail with the right to marry and found a family in Viet Nam. Since the promulgation of the Law on Marriage and Family there have been no new documents, amendments and supplements to the Law.

XXII. Protection of the interests of children (art. 24)

112. See the first Country Report by the Vietnamese State on Implementation of the Covenant on the rights of Children, which was defended in 1993 at the UN Commission on the Rights of Children.

XXIII. The right to take part in the management of public affairs (art. 25)

113. The 1992 Constitution stipulates: "The citizen exercises the right to mastery at the grassroots by participating in State and social affairs; he/she is duty-bound to help protect public property, legitimate civic rights and interests, maintain national security and social order, and organize public life" (article 11) "The citizen has the right to participate in the administration of the State and management of society, in discussions of problems of the country and the locality; he/she can send petitions to State organs and vote in referendums organized by the State (article 53).

114. The right to participate in the administration of the State is given expression, first of all, in the citizen's right to vote and stand for election. Both the Law on Election of the National Assembly (art. 2) and the Law on Election of the People's Councils (art. 2) stipulate: "The citizen, regardless of cultural level, occupation, time of residence, shall, upon reaching fully 18 years of age, have the right to vote, and, upon reaching at least 21 years of age, have the right to stand for election to the National Assembly and People's Councils in accordance with the provisions of the law".

115. The citizen takes part in the administration of the State through the exercise of the right to lodge complaints and denunciations with a competent State authority against unlawful acts committed by State organs, economic and social bodies, units of the People's Armed Forces, or any individual whatsoever (article 74, 1992 Constitution).

116. The citizen takes part in the administration of the State through supervision over the activities of State organs and with deputies to the National Assembly. The latter must keep a close link with their constituents, be subjected their supervision, maintain regular contact with their constituents, try to understand their state of mind, aspirations, collect their opinions and report them faithfully to the National Assembly and State organs concerned. At least once a year a deputy to the National Assembly must report to his /her constituents on the fulfilment of his/her obligations as a deputy. A voter can directly or through the Viet Nam Fatherland Front ask his/her deputy to report on his/her work and can give his/her remarks on the fulfilment of the tasks of the deputy (article 43 of the Law on Organization of the National Assembly).

117. In their relationships with voters, deputies to the National Assembly are duty-bound to study and report to the bodies concerned the citizens' petitions, complaints and denunciations, and push up and closely watch their settlement. Voters have the right to repeal a deputy to the National Assembly (article 49 of the 1992 Law on Organization of the National Assembly).

118. The citizen takes part in the administration of State affairs through making State policies and laws. The law provides that, after drafting laws, ordinances, resolutions and decisions the Government should send the drafts to the Viet Nam Fatherland Front and the Viet Nam General Confederation of Trade Unions and other mass associations so that they can make suggestions. The government creates favourable conditions for the Viet Nam Fatherland Front, the Viet Nam General Confederation of Trade unions and other people's associations, and urge and enable the people to contribute to the building and consolidation of the people's power; help in the implementation of the State's general and specific policies, supervise the activities of State organs, elected deputies, cadres and State officials ... (article 39 of the 1992 Law on the Organization of the Government).

119. In order to strengthen the supervision by the people of the Government's activities, the citizen's right to have access to information should be guaranteed. The Prime Minister must make regular reports to the people through the mass media on major issues to be settled by the Government (article 114, Point 6, of the 1992 Constitution).

120. The citizen's right to take part in social affairs is also provided for by the 1992 Law on the Organization of People's Courts: at the grassroots, the people's appropriate organizations should be founded to settle violations of the law and minor disputes among the people (article 2); people's assessors shall take part in trials held by the people's courts and have equal rights with judges; trials at military courts should be attended by military assessors in accordance with the provisions of the procedure law (article 4).

XXIV. The right to non-discrimination before the Law (art. 26)

121. This part has been covered in detail in paragraphs concerning the implementation of articles 2 and 14 of the Covenant.

XXV. The right of ethnic minorities (art. 27)

122. In principle, continuing the provision of the 1946 and 1959 constitutions, the 1992 Constitution provides:

> "The SRVN is the unified State of all nationalities living in the territory of Viet Nam.
>
> The State carries out a policy of equality, solidarity and mutual assistance among all nationalities, and strictly forbids all acts of ethnic discrimination and division.
>
> Every nationality has the right to use its own language and system of writing to preserve its ethnic identity, and to promote its fine customs, habits, traditions and culture.
>
> The State carries out a policy of comprehensive development and gradually raises the material and spiritual conditions of ethnic minorities (article 5).
>
> In the spirit of the 1992 Constitution and of the legal documents relating to the sphere of ethnicity, all nationalities, be they ethnic minorities, are equal with respect to their rights and obligations in all aspects of social life; any ethnic minority which, owing to historical background and living conditions, is faced with difficulties, enjoys the care and assistance of the State in order to be equal with other nationalities.

123. With regard to the political right of ethnic minorities, the following major provisions are set forth:

> "... they have the right to vote upon reaching fully the age of 18, and to stand for elections to the National Assembly and People's Councils, upon reaching fully the age of 21, in accordance with the provisions of the law".

124. The citizen's right to vote and stand for elections has been dealt with in detail in articles 2,9 and 10 of the 1992 Law on Organization of the National Assembly, and articles 2, 8, and 9 of the 1983 Law on Organization of Elections to the People's Councils. In addition, in order to guarantee full and wide participation of all ethnic minorities in the National Assembly, the Supreme organ of the power of the State and the highest representative organ of the people. Article 9 of the 1992 Law on Organization of the National Assembly stipulates: "The number of deputies from ethnic minorities in each National Assembly legislature shall be set by the National Assembly Standing Committee to ensure that ethnic minorities have an appropriate number of deputies". Hence an increasing number of citizens from various ethnic minorities in Viet Nam voted and stood for elections to organs to be elected by the people. This has responded to the wishes of all nationalities to participate in the political life and the administration of the country. Let us cite an example: the number of deputies from ethnic minorities accounts for 16.7 per cent of the National Assembly, a higher percentage in comparison with their share in the whole population of Viet Nam.

125. Besides creating conditions for all ethnic minorities to participate in the work of state organs and activities relating to the administration of the State, the State has set up specialized bodies, such as the National Assembly Council of Nationalities, the Government Commission on Nationalities and Mountain Areas ... to help it work out, supervise and implement policies concerning nationalities, especially ethnic minorities.

126. The Council of Nationalities has actually become a body specialized in conducting research work and surveys on the conditions of all nationalities, in collecting and summing up the opinions and aspirations of the people from all nationalities to submit them to the National Assembly and make recommendations on making policies and laws on the problem of nationalities and mountain areas; it is also duty-bound to supervise the implementation of those policies and provisions. As for the Government Commission on Nationalities and Mountain Areas, it is duty-bound to act as an advisory council to the government in the implementation of State policies on nationalities, to watch and coordinate the implementation of these policies in various branches localities and at various levels. The State also specifies the responsibility of State organs in the protection of the right of all nationalities, as provided for in articles 84, 94 and 112 of the 1992 Constitution, in articles 2 and 20 of the 1992 Law on Organization of the National Assembly, articles 13 and 18 of the 1992 Law on Organization of the Government, article 13 of the 1983 Law on Organization of the People's Councils and People's Committees (which was amended in 1989), and in the 1992 Regulations on Activity of the Council of Nationalities.

127. With regard to the civil rights of ethnic minorities the first Civil Code of the SRVN sets forth a general principle, namely that of ensuring equality and non-discrimination between the ethnic majority and ethnic minorities in civil transactions. Article 4 of the Civil Code affirms a major principle: "People of ethnic minorities shall be provided with favourable conditions in civil transactions in order gradually to raise the level of their material and spiritual life". The Civil Code also sets forth a major provision with regard to defining the ethnicity of an individual, under which a citizen has the right to request that his/her ethnicity be defined and guaranteed by the State in accordance with the law(article 30). Article 4 of the Civil Code also affirms the principle of respect for the morals and fine customs and traditions of nationalities, including ethnic minorities:

> "The establishment and fulfilment of civil rights and obligations shall preserve ethnic characteristics and shall respect and develop the fine morals, customs and traditions as well as the solidarity, mutual assistance, love, affection, and the spirit of 'each person for the community and the community for each person', and the ethical values of other nationalities living in Viet Nam".

128. People of ethnic minorities living on the territory of Viet Nam also have the right to use their own languages and systems of writing as provided for by article 5 of the 1992 Constitution. The right of all nationalities to use their own languages and systems of writing in the field of education has been provided in detail in article 4 of the 1991 Law on Popularization of Primary Education. The right of ethnic minorities to use their own languages and systems of writing in the sphere of publication, the press, is also specified in article 3 of the 1989 Law on the Press and

article 4 of the 1993 Law on Publication. The right of nationalities to use their own languages and systems of writing in court has been provided for in article 133 of the 1992 Constitution, in article 21 of the Criminal Procedure Code (passed in 1985 and supplemented in 1992), in article 7 of the 1989 Ordinance on Procedures for Settling Civil Cases, in article 12 of the 1993 Ordinance on Organization of Military Courts, in article 8 of the 1994 Ordinance on Procedures for Settling Economic Cases, and in article 7 of the 1996 Ordinance on Procedures for Settling Labour Disputes.

129. The Vietnamese State makes sustained efforts to carry out its consistent policy, namely guaranteeing the solidarity, equality, mutual assistance of all nationalities. It also strives to build a happy life in which everyone has enough to eat and to wear, and to preserve and develop the identity and fine traditions of every nationality. Thanks to this the block of unity has been gradually strengthened, the right to mastery of all ethnic minorities is respected and developed, production has been increased, cultural and educational work has been given a fillip, and the living conditions of the people of ethnic minorities have been improved. However, in the aftermath of the war and owing to lack of experience in the administration of the State and other difficulties, Viet Nam has only achieved initial results in the implementation of the rights of ethnic minorities living in the country. So, it has to make greater efforts in the years to come and in the distant future as well.

130. Viet Nam has submitted and defended its second country report on the Implementation of the Covenant on Elimination of All Forms of Racial Discrimination. The Human Rights Committee may read, for further reference, the part concerning the State Policy of the SRVN on Guaranteeing the implementation of the Rights of Ethnic Minorities in that report.

CONCLUSION

131. Viet Nam's Second Country Report on the Implementation of the Covenant on Civil and Political Rights is, in the main, based on the plan and model of the first report, made at the request of the Committee of the Covenant on Civil and Political Rights. This report aims to introduce updated versions of the legal documents promulgated by the Vietnamese State since 1990 (i.e. after the Vietnamese government defended the first Report at the Covenant Committee).

132. Each part of this Report gives evidence of the determination and efforts of the Vietnamese State in reforming, building and perfecting the system of legal guarantees regarding the fullest enjoyment of the Citizen's civil and political rights, which is one of the major factors for ensuring the success of the process of renovating all aspects of Viet Nam's social life.

133. Building and perfecting a legal framework on a national scale constitutes the prerequisite for a State governed by laws. It requires sustained efforts from the Vietnamese State. While striving to achieve this objective we are conscious of the increasingly important role of International Law and of the need to make national laws further conform to International Law, or more precisely, to the international conventions on Human Rights to which Viet Nam has adhered. We must also set great store by the nation's traditional, historical, cultural, political and social characteristics, and guarantee that they will be preserved. This means that we cannot

mechanically apply, but should apply, in a creative and effective way, international legal norms on human rights to the specific conditions of Viet Nam. Only by so doing can these international norms on human rights bring into full play their practical values. Conscious that the respect and guarantee for the citizen's fundamental rights and freedoms represents the lofty cause of every nation, and humans are both the objective of and the driving force behind the country's renovation process, the Vietnamese State has been doing its utmost gradually to bring to perfection and to strengthen the system of legal guarantees concerning the citizen's fundamental rights and freedoms.

Appendix 1

CODES AND LAWS PROMULGATED BETWEEN 1990 AND APRIL 1995

Chronological Order	Passage date	Names of Laws & Codes	Decrees on detailed provisions & guidelines for implementation
1	30-6-1990	Law on Amendments & Supplements to provisions of Criminal Procedure Code	
2	30-6-1990	Law on Trade Unions	Decree 133/HDBT20/4/1990
3	30-6-1990	Law on Amendments & Supplements to Law on Foreign Investment in VN	Decree 28/HDBT//2/1991
4	30-6-1990	Law on Viet Nam Navigation	
5	30-6-1990	Law on Turnover Tax	Decree 351/HDBT2/10/1990
6	30-6-1990	Law on special Sales Tax	Decree352/HDBT2/10/1990
7	30-6-1990	Law on Corporate Income Tax	Decree 352/HDBT2/10/1990
8	21-12-1990	Company Law	Decree 22/HDBT 23/7/1991
9	21-12-1990	Law on Private Enterprises	Decree 22/HDBT 23/7/1991
10	21-12-1990	Law on Amendments and Supplements to Provisions of Law on VN Army Officers	
11	21-12-1990	Law on A.&S. to Provisions of Law on Military Service	
12	12-08-1991	Law on A.&S. to Provisions of the Criminal Code	
13	12-08-1991	Law on Popularization of Primary Education	Decree 338/HDBT 26/10/1991
14	12-08-1991	Law on Children's Care, Protection & Education	Decree 374/HDBT 11/11/1991
15	12-08-1991	Law on Forest Protection & Development	Decree 17/HDBT 17/01/1992
16	26-12-1991	Law on Export & Import	Decree 110/HDBT 31-3-1992
17	26-12-1991	Law on VN Civil Aviation	
18	15-04-1992	Constitution of the SRVN	
19	15-04-1992	Law on Organization of N.A.	
20	15-04-1992	Law on Elections to N.A.	
21	30-09-1992	Law on Organization of Government	
22	30-09-1992	Law on Organization of People's Court	
23	30-09-1992	Law on Organization of People's Office of Supervision Control	
24	22-12-1992	Law on A. & S. to Provisions of the Criminal Code	

Chronological Order	Passage date	Names of Laws & Codes	Decrees on detailed provisions & guidelines for implementation
25	22-12-1992	Law on A. & S. to Provisions of Criminal Procedure Law	
26	23-12-1992	Law on A. &S. to Provisions of Law on Foreign Investment in Viet Nam	Decree 18/CP 16/4/1993
27	5-7-1993	Law on A.& S. to Provisions of Law on Export&Import Duty	Decree 54/CP 28/8/1993
28	5-7-1993	Law on A.&S. to Provisions of Law on Special Sales Tax	Decree 56/CP 28/8/1993
29	6-7-1993	Petroleum Law	
30	6-7-1993	Law on A.&S. to Provisions on Corporate Income Tax	Decree 57/CP28/8/1993
31	6-7-1993	Law on A. & S. to Provisions of Law on Turnover Tax	Decree 55/CP 28/8/1993
32	7-7-1993	Law on Publication	Decree 79/CP 6/11/1993
33	10-7-1993	Law on Use of Farm Land	Decree Decree 74/CP25/10/1993
34	14-7-1993	Land Law	
35	27-12-1993	Environment Protection Law	Decree 175/CP 18/10/1994
36	28-12-1993	Law on A.&S. to Provisions of Law on Organization of People's Court	
37	30-12-1993	Bankruptcy Law	Decree 189/CP 23/12/1994
38	21-6-1994	Law on Organization of People's Councils &People's Committees (amended)	
39	21-6-1994	Law on Election to People's Councils (amended)	Decree 81/CP 1/8/1994
40	22-6-1994	Law on Tax on Transfer of Right to Use Land	Decree 114/CP 5/9/1994
41	22-6-1994	Law on Encouragement of Domestic Investment	Decree 29/CP 12/5/1995
42	22-6-1994	Law on A.&S. to Provisions of Company Law	
43	22-6-1994	Law on A.&S. to Provisions of Law on Private Businesses	
44	22-6-1994	Law on A.&S. to Provisions on Law on Military Service	Decree 190/CP 24/12/1994
45	23-6-1994	Labour Code of the SRVN	Decrees 195,196,197.198/CP 31/12/1994
46	20-4-1995	Law on State Businesses	
47	20-4-1995	Law on A.& S. to Provisions of Law on Civil Aviation	

Appendix 2

ORDINANCES PROMULGATED BETWEEN 1990 AND DECEMBER 1994 ON DETAILED PROVISIONS AND GUIDELINES

Chronological Order	Passage date	Names of Ordinances	Decrees on detailed provisions & guidelines for implementation
1	12-1-1990	Ordinance on Economic Arbitration	
2	1-1-1990	Ordinance on Inspection	
3	9-4-1990	Ordinance on Natural Resources Tax	Decree 06/HDBT 7/1/1991
4	9-4-1990	Ordinance on A.&S. to Provisions of Ord. on Military Courts	
5	9-4-1990	Ordinance on A.&S. to Provisions of Ord. on Organization of Military Offices for Sup.&Control	
6	25-4-1990	Ordinance on Viet Nam State Bank	
7	1990	Ordinance on Customs	
8	1990	Ordinance on Transfer of Foreign Technology to VN	Decree 49/HDBT 4-3-1990
9	1990	Ordinance on Income Tax on High Income Earners	Decree 119/HDBT 17/4/1991
10	24-5-1990	Ordinance on Banks, Credit Cooperatives and Finance Companies	
11	16-7-1990	Ordinance on Metrology	Decree 115/HDBT 13/4/1991
12	10-9-1990	Ordinance on Inheritance	
13	10-91990	Ordinance on Labour Contracts	Decree 165/HDBT 15/2/1992
14	1990	Ordinance on House & Land Tax	Decree 270/HDBT 14/9/1991
15	2-1-1991	Ordinance on Commodity Quality	Decree 327/HDBT 14/9/1991
16	19-9-1991	Ordinance on Labour Protection	
17	7-5-1991	Ordinance on Civil Contracts	
18	2-5-1991	Ordinance on Citizen's Claims and Denunciations	Decree 38/HDBT 2/1/1992
19	8-11-1991	Ordinance on Protection of State Secrets	Decree 84/HDBT 9/3/1992
20	29-2-1992	Ordinances on Entry, Exit,Residence & Travel of Foreigners in Viet Nam	Decree 04/CP 18/1993 Decree 17/CP 30/3/1993 Decree 44/CP 24/3/1995
21	10-8-1992	Ordinance on Land Tax	Decree 339/HDBT22/9/1992
22	15-2-1993	Ordinance on Veterinary Medicine	Decree 93/CP 27/11/1993
23	15-2-1993	Ordinance on Vegetation Protection&Quarantine	Decree 92/CP 27/11/1993
24	20-3-1993	Ord. on Flood&Typhoon Prevention &Fighting	Decree 60/CP 16/9/1993